natural and ordinary meaning. In my view, it was in the interest of employer and employee relationship and also in the interest of industrial peace that a non-unionised workman who was aggrieved by his dismissal should exercise his right within one month from the date of his dismissal. As stated by Lord Denning in *Dedman* v. *British Building Ltd.*[5]:

"Under the provisions of the Industrial Relations Act 1971 a worker who seeks compensation for unfair dismissal is bound to comply with a very strict time limit. He must present his complaint within four weeks after his employment has terminated. There is an 'escape clause' which I will consider in a moment, but, unless the worker can bring himself within it, he is barred.

According to the decisions of the Industrial Court, the time limit is so strict that it goes to the jurisdiction of the tribunal to hear the complaint. By that I mean that, if the complaint is presented to the tribunal just one day late, the tribunal has no jurisdiction to consider it. Even if the employer is ready to waive it and says to the tribunal: 'I do not want to take advantage of this man. I will not take any point that he is a day late'; nevertheless the tribunal cannot hear the case. It has no power to extend the time: see *Westward Circuits Ltd.* v. *Read* [1973] I.C.R. 301 and *Rogers* v. *Bodfari (Transport) Ltd.* [1973] I.C.R. 325. The complaint must actually reach the tribunal itself within the four weeks. It is not sufficient for the man to put it into the post-box. He must see that it is 'presented' and delivered into the hands of the clerks of the tribunal themselves within the four weeks. If it arrives a minute after midnight on the last day, the clerks must throw it out. The tribunal is not competent to hear it: see *Anglo Continental School of English (Bournemouth) Ltd.* v. *Gardiner* [1973] I.C.R. 261. In counting the time, too, the man is not even given the full four weeks. According to the decision of the Industrial Court, the first day includes the very day on which his employment terminates so that he must deliver it to the tribunal within 27 days thereafter. Else he is out: see *Hammond* v. *Haigh Castle Co. Ltd.* [1973] I.C.R. 148; *Haigh* v. *A. Lewis & Co. (Westminster) Ltd.* (unreported), April 11, 1973."

Although section 23(5) of the English Industrial Relations Act 1971 was not *in pari materia* with our section 20(1), I was of the view that a strict interpretation was desirable in our case. To conclude otherwise would result in serious consequences, in that the Industrial Court would be flooded with stale appeals, and employers would be left in a state of uncertainty as to when a dismissed workman would exercise his right under section 20(1). Such state of affairs would certainly not help in promoting industrial peace in this country. Further, the remedy of *certiorari* was entirely discretionary and, in my view, this was not a proper case where the remedy sought should be given.

Order accordingly.

JUMATSAH BIN DAUD & ANOR. v. VOON KIN KUET & ANOR.

[O.C.J. (Chong Siew Fai J.) June 30, 1980]
[Kuching — Civil Suit No. K. 496 of 1977]

Practice and Procedure — Limitation — Filing of writ within limitation period — Writ of summons signed and sealed after expiry date — Power of court to amend date — R.S.C. 1957, O. 2 r. 8.

Limitation — Filing of writ within period — Court official signed and sealed it after expiry date — Whether action statute-barred — Limitation Ordinance (Sarawak Cap. 49), ss. 3 & 6(1).

In this case the plaintiffs had filed a writ and paid the fee therefor within the period of limitation but from the date appearing on the writ it seemed that the court official had signed and sealed the writ after the date of expiry. The following facts or points of law were not in dispute:—

(a) The road accident occurred on November 6, 1974.

(b) The writ of Summons in this action was filed with the High Court Registry at Kuching, on November 2, 1977 and the filing fee therefor was paid on the same date.

(c) The Writ of Summons bore the date "the 14th day of November 1977" which appeared to indicate that the writ was sealed on November 14, 1977.

(d) Under the Limitation Ordinance, the period of limitation is 3 years from the date the accident occurred (Item 92 of the Schedule thereto), and the period of limitation expired on November 6, 1977.

Held: (1) having regard to the provisions in Order 2 rule 8 the writ should be dated on the day the writ was filed and the filing fee was paid, and with the same date of the filing and the payment;

(2) in this case amendment to the writ should be allowed so that the date "14th day of November 1977" appearing on the writ of summons would read "2nd day of November, 1977";

(3) the defence that the action in this case was statute-barred failed.

Cases referred to:-

(1) *Boota Singh* v. *Isman bin Ali* [1957] M.L.J. 127.
(2) *Clark* v. *Bradlaugh* [1881-5] All E.R. Rep. 1002 C.A.
(3) *Pritam Kaur* v. *S. Russell & Sons Ltd.* [1973] 1 All E.R. 617.
(4) *Kirk* v. *Dolby* 151 E.R. 567.
(5) *Ponnamma & Anor.* v. *Padmanabhan & Ors.* A.I.R. 1969 Ker. 163.
(6) *Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy & Ors.* (1876) I.L.R. 1 Cal. 226.

CIVIL SUIT.

Anthony Liew (standing in for *M.S. Sandhu*) for the plaintiffs.

Lee Chuan Eng for the defendants.

Cur. Adv. Vult.

Chong Siew Fai J.: On February 5, 1980, Datuk Mohd. Yusoff J., on an application by the defendants in this action, made an order that the issue raised in the defence of the defendants as to whether the plaintiffs' action herein is barred by virtue of the Limitation Ordinance be set down for hearing, and be disposed of as a preliminary point of law before the trial.

There are two plaintiffs in this action. The 1st plaintiff, Jumatsah bin Daud, is an infant and he brings this action by his father and next friend, Daud bin Ibrahim. The 2nd plaintiff is also Daud bin Ibrahim who sues both in his personal capacity and as the administrator of the estate of his son Hazari bin Daud, deceased. The claims against the two defendants are for damages arising out of a road traffic accident in which the 1st plaintiff was injured and the deceased died. By their defence, the defendants deny liability and contend that the plaintiffs' claims are statute-barred under the Limitation Ordinance.

For the purpose of determining this preliminary issue, the following facts or points of law are relevant and are not in dispute:

(1) The road accident occurred on November 6, 1974.

(2) The writ of summons in this action was filed with the High Court Registry at Kuching, on Novem-

ber 2, 1977 and the filing fee therefor was paid on the same date.

(3) The writ of summons bore the date "November 14, 1977" which appears to indicate that the writ was sealed on November 14, 1977.

(4) Under the Limitation Ordinance, the period of limitation is 3 years from the date the accident occurred (Item 92 of the Schedule thereto), and the period of limitation expired on November 6, 1977.

Section 3 of the Limitation Ordinance provides:

"Subject to sections 4 to 24 inclusive, every suit instituted after the period of limitation prescribed therefor by the Schedule, if limitation has been set up as a defence, shall be dismissed."

Counsel for the defendants contends, in short, that the writ of summons was sealed with the seal of the High Court and signed by the Registrar (in fact by the Assistant Registrar on behalf of the Registrar) on November 14, 1977. That being so, the action was commenced after the expiration of the limitation period, and the action therefore should be dismissed. In support of this contention, counsel for the defendants relied on *Boota Singh* v. *Isman bin Ali.*[1]

There is, however, no evidence by affidavit or otherwise, that the writ of summons was sealed and signed on November 14, 1977. Obviously counsel for the defendants relied on the date "November 14, 1977" appearing on the writ for the contention.

In *Boota Singh's* case it was said, and to which I agree, that the expression "suit instituted" is synonymous with "action commenced", that the issue of a writ of summons commences an action and that when a writ is sealed it is deemed to be issued. In that case Whyatt C.J. said (page 127):

"The expression 'suit instituted' is synonymous, in my view, with 'action commenced', an expression which is frequently found in ordinances and rules of court, and if there were any doubt on this point, it would, in my opinion, be disposed of by the judgments in *Rood Barrs* v. *Catbcart.* In that case the Court was called upon to construe the words 'any proceeding... instituted' and in the course of his judgment Lopes L.J. said, 'The expression 'proceeding instituted' conveys to my mind the idea of some action commenced...'; likewise Davey L.J., in a concurring judgment, expressed the view that 'instituted' was an apt word to apply to the commencement of a suit."

In the paragraph immediately following the above, Whyatt C.J. said:

"So far as proceedings in the High Court are concerned, it has never, as far as I am aware, been questioned that the issue of a writ of summons commences an action and this is confirmed by a note in the Annual Practice 1957 at page 13 where it is stated, 'when a writ is sealed it is deemed to be issued and the action is then commenced."

However, *Boota Singh's* case, in my view, is distinguishable. In that case, no question arose respecting the time of presenting the summons to the court for sealing and the effect thereof. Indeed, from the report of the case, it is not known when the summons was presented for sealing. The point there in issue was whether the Limitation Ordinance ceased to run when the plaintiff requested the court clerk to prepare the summons or whether it continued to run until the summons was actually sealed and issued. In the instant case the plaintiffs had filed the writ and paid the fee therefor within the period of limitation but from the date appearing on the writ it seemed that the court official had signed and sealed the writ after the expiration thereof.

Counsel for the plaintiffs contended that since the writ had been filed and payment therefor made on November 2, 1977, (these are not challenged), which was before the expiration of the period of limitation, what the registry officials did with the writ of summons thereafter was beyond the plaintiffs' control and the suit must be taken to have been instituted within time.

Since all acts relating to the issue of the writ of summons herein were done before May 31, 1980, only the Rules of the Supreme Court 1957 need be considered.

Order 2 rule 8 of the 1957 Rules provides: "Every writ of summons ..... shall bear date *on the day on which the same shall be issued* ....". (The emphasis is mine); and

Order 5 rule 11 thereof provides: "Every writ of summons shall be sealed with the seal or stamp of the court and shall be dated and signed by the Registrar."

In *Clark* v. *Bradlaugh*[2] it was held that the issue of a writ of summons in an action was not a judicial act but the act of the plaintiff. Now what has a plaintiff to do in the High Court Registry in Kuching when he wants to issue a writ of summons? He or his advocate will properly prepare and sign the required copies of the writ and the praecipe, and submit them to the proper officer in the court registry for dating, signing and sealing after paying the prescribed fee. Once these are done the plaintiff has completed his part in the issue of a writ. What is required thereafter is some act of the court official e.g. the affixing of the seal of the court and so on, to give the writ its validity. (Order 5 rule 11, 12 and 13). Having regard to the provisions in Order 2 rule 8, the writ should, to my mind, be dated on the day the writ is filed and the filing fee is paid, and with the same date of the filing and the payment. This is in line with such cases as *Pritam Kaur* v. *S. Russell & Sons Ltd.*[3] where the expiry date of the limitation period of a suit fell on a public holiday, the plaintiff issued the writ on the following day and the writ was dated with the date of that following day. Indeed, as Denning L.J. said in *Pritam Kaur* on page 619:

"As soon as the offices of the court re-opened on Monday, September 7, 1970, the plaintiff issued the writ. That is to day, her solicitors took the writ to the offices of the district registry at Leicester. A clerk in the registry stamped it with the official stamp in the proper place (*locus sigillare*). It was than duly issued."

The present dispute arose because of the irregular practice of the court registry in Kuching. Until a few months ago, it did happen that writs of summons presented to the registry were dated a few days after their being filed. However, this practice has ceased and all writs filed are now dated with the same dates on which they are filed and filing fees paid. The state of affair in the instant case was the result of the previous erroneous procedure. It is clearly unjust

and prejudicial to the plaintiffs who, unless remedial measure is available and taken, will be made to suffer owing to no fault of their own or their advocates. Can anything be done about it? In *Kirk* v. *Dolby*[4] the writ of summons was mistakenly dated and it was held that the court had power to order amendment of the date thereon to correspond with that appearing on the praecipe which was correctly dated. The question of statutory limitation of the action did not arise in *Kirk* v. *Dolby*, whereas, in the instant case, limitation of action is in issue, there is therefore all the more reason that amendment should be allowed. I therefore direct that the date "November 14, 1977" appearing in the writ of summons in this action be amended to read "November 2, 1977".

Furthermore, section 6(1) of the Limitation Ordinance (Cap. 49) provides, in my view, yet another ground for holding that the claim of the 1st plaintiff is not barred by limitation. As stated earlier, the 1st plaintiff is an infant suing by his father and next friend. Section 6(1) of the Limitation Ordinance provides:

"If a person entitled to institute a suit is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit within the same period after the disability has ceased as would otherwise have been allowed from the time prescribed therefor in the third column of the Schedule."

My view seems to have support from some Indian authorities which, though not binding upon this court, are of persuasive value and should be respected. Section 6(1) of our Limitation Ordinance is materially similar to section 6(1) of the Indian Limitation Act 1908.

Section 6(1) of the said Indian Act, so far as material, provides:

"Where a person entitled to institute a suit is, at the time from which the period of limitation is to be reckoned, a minor, or insane or an idiot, he may institute the suit xxx within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first Schedule."

In *Ponnamma & Anor.* v. *Padmanabhan & Ors.*[5] the judgment when dealing with section 6 of the Indian Act said (page 167):

"The wording of the section makes it clear that even if a person is a minor it will be open to his next friend to institute a suit. Although a guardian is not obliged to file a suit, there is nothing prohibiting him from filing one on behalf of a person while he continues under a disability after the ordinary period of limitation."

In *Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy & Ors.*[6] on a construction of section 11 of the Indian Limitation Act 1859, the relevant effect thereof is materially similar to that of section 6(1) of our Limitation Ordinance, it was held that although the ordinary prescribed period of limitation had expired, an infant could bring a suit by his guardian whilst the disability of infancy continued. Sir J.S. Colvile said (page 166):

"...the only other point to be considered on this question of limitation is whether the learned judge was right in holding that an infant cannot after the expiration of the year bring a suit by his guardian whilst the disability of infancy continues. Their Lordships cannot agree in this construction, which, it would appear from the cases cited by Mr. Bell — *Kamchunder Roy* v. *Umbica Dossee* (7 W.R., 161, *Ram Ghose* v. *Greedhur Ghose* (14 W.R. 429), and *Suffuroonnisen Beebee* v. *Koorul Hossein* (17 W.R. 419) — has not been accepted or followed by the Courts in India. It is unreasonable in itself, since it implies that the infant's claim, which is admittedly not barred, was asserted too soon rather than too late; and it cannot be the policy of the law to postpone the trial of claims. Again, to render such a construction imperative, the phraseology of the 11th section must be altered by making the words "after the disability shall have ceased" precede, instead of follow, as they do, the words 'within the same time.' Their Lordships are, therefore, of opinion that the plaintiff's suit is not open to the objection that, in so far as it concerns the properties in question in Hon. 238, 240, and 245, it has not been brought within the proper time."

For the above reasons, I hold that the defence that the action is statute-barred failed.

As to costs, since the state of affairs was not brought about by the fault of the plaintiffs, nor could the defendants be said to have been unreasonable in raising the issue, there shall be order that costs be in the cause.

Order accordingly.

Solicitors: *Goh & Liew; Ee & Lim.*

NATIONAL UNION OF HOTEL, BAR AND RESTAURANT WORKERS v. THE INDUSTRIAL COURT & ANOR.

[O.C.J. (Hashim Yeop A. Sani J.) October 6, 1980]
[Kuala Lumpur — Originating Motion No. A8 of 1979]

Administrative Law — Certiorari — Award of Industrial Court — Alleged error of law in interpretation by Industrial Court — Error did not affect jurisdiction — Industrial Relations Act, s. 32(3).

Industrial Law — Award of Industrial Court — Alleged error of law — Error did not affect jurisdiction — Employment Ordinance, 1955, s. 24(2)(b) — Industrial Relations Act, 1967, s. 32(3).

The applicant had applied for an order of *certiorari* in respect of an award made by the Industrial Court. It was alleged that the Industrial Court had made errors of law in the interpretation of the collective agreement and of section 24(2)(b) of the Employment Ordinance, 1955.

Held: the error or errors did not affect the jurisdiction of the Industrial Court and therefore the High Court had no jurisdiction to quash the decision by *certiorari* proceedings.

Cases referred to:-

(1) *South East Asia Firebricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturers Employees Union & Ors.* [1980] 2 M.L.J. 165.

(2) *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147.

(3) *Pearlman* v. *Harrow School* [1979] 1 Q.B. 56, 74.

ORIGINATING MOTION.

T. Thomas for the applicant.

C.V. Das for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: On August 11, 1979 applicant, the National Union of Hotel, Bar and Restaurant Workers, was granted leave to apply for an order of *certiorari* in respect of an award made by the Industrial Court on March 22, 1979. Notice of motion for an order of *certiorari* was taken out on August 18, 1979.